

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band)	WT Docket No. 07-195
)	

To: The Commission

**JOINT COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION AND
UNITED STATES CELLULAR CORPORATION**

**TDS TELECOMMUNICATIONS
CORPORATION**

Sara Cole
Manager, Federal Affairs
TDS Telecommunications Corporation
525 Junction Road
Madison, WI 53717
Phone: 608-664-4000
Fax: 608-845-4809
Email: sara.cole@tdstelecom.com

**TDS TELECOMMUNICATIONS
CORPORATION AND
UNITED STATES CELLULAR
CORPORATION**

George Y. Wheeler
Peter Connolly
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W. #100
Washington, DC 20006-6801
Phone: (202) 955-3000
Fax: (202) 955-5564
Email: george.wheeler@hklaw.com
peter.connolly@hklaw.com

**UNITED STATES CELLULAR
CORPORATION**

Grant Spellmeyer
Director-Regulatory Affairs
United States Cellular Corporation
8410 West Bryn Mawr
Phone: 723-399-4280
Fax: 723-399-3133
Email: grant.spellmeyer@uscellular.com

Table of Contents

	<u>Page</u>
Introduction and Summary	1
Discussion	3
1. The Commission Should Adopt Service Area License Sizes for AWS-3 Spectrum Which Preserve Licensing Opportunities for a Variety of Applicants.	3
2. The Commission Should Not Adopt Regional Economic Area Grouping or Nationwide Licensing for any AWS-3 Spectrum.	4
3. The Commission Should Use Standard Simultaneous Multi-Round Bidding Procedures Without Package Bidding for AWS-3 Licensee Selection.	4
4. The Commission Should Maintain Reasonable Renewal And Performance Requirements.	5
5. The FCC Should Not Adopt The Proposals of M2Z or Others Proposing Detailed Requirements.	10
Conclusion	11

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless)	WT Docket No. 07-195
Services in the 2155-2175 MHz Band)	

To: The Commission

**JOINT COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION AND
UNITED STATES CELLULAR CORPORATION**

TDS Telecommunications Corporation ("TDS Telecom") and United States Cellular Corporation ("USCC") on behalf of themselves and their subsidiaries (collectively "Joint Commenters"), by their attorneys, submit their comments in response to the Commission's Notice of Proposed Rulemaking (FCC 07-164) released September 19, 2007 ("NPRM") addressing service rules for licensed fixed and mobile services, including Advanced Wireless Services ("AWS"), in the 2155-2175 MHz ("AWS-3") band.

Introduction and Summary

Joint Commenters support the Commission's objective in this proceeding, which is to allow for the effective and efficient use of the spectrum in this band while also encouraging development of robust wireless broadband technology capable of providing Americans with universal, affordable access to broadband services. We agree that wireless broadband systems developed using the AWS-3 band have the potential to offer consumers another choice for broadband access, competing in price and features with existing landline offerings and allowing providers to extend the reach of their broadband services.

We are concerned that implementation of AWS-3 spectrum could require complex technical tradeoffs because the AWS-3 band is adjacent to base transmit bands on either side, AWS-1 operations at 2110-2155 MHz and proposed AWS-2 operations at 2175-2180 MHz. This spectrum location presents complex interference challenges which could threaten implementation of new advanced services in the adjacent AWS-1 band by the winners in Auction #66.

There are also interference issues involving adjacent AWS-2 spectrum¹ which compound the already complex technical proposals surrounding the proposed implementation of 2020-2025 MHz paired with 2175-2180 MHz in WT Docket Nos. 04-356 and 02-353. We continue to support the timely resolution of these pending proceedings so that J-Block spectrum can be available at an early date for the continued development and operation of competitive wireless networks and the expansion of wireless services in rural and underserved areas.²

Among the most important issues before the Commission in this proceeding is how to create licensing opportunities in AWS-3 spectrum which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. We support adoption of smaller market sizes, ideally Metropolitan Statistical Area/Rural Service Area ("CMA") market sizes, which provide the greatest flexibility in tailoring service area footprints and will promote economic opportunity for the widest variety of applicants. We also support the adoption of flexible "substantial service" renewal and build out requirements to promote timely and cost-efficient deployment in rural and underserved areas. We strongly oppose the adoption of Regional Economic Area Grouping ("REAG") or nationwide licensing for any of this spectrum and the exclusive use of package bidding procedures in licensee selection. We also oppose the adoption of the specific proposals of M2Z Network and others to govern operations within this

¹ See the Commission's Notice of Proposed Rulemaking (FCC 04-218) released September 24, 2004 proposing service rules for Advanced Wireless Services in the 1915-1920 MHz paired with 1995-2000 MHz ("H-Block") and 2020-2025 MHz paired with 2175-2180 MHz ("J-Block") in WT Docket No. 04-356 and WT Docket No. 02-353.

² See Comments and Reply Comments of USCC dated December 8, 2004 and January 7, 2005, respectively, in WT Docket Nos. 04-356 and 02-353.

band. We believe that auction winners should be give maximum flexibility to design their networks in accordance with the characteristics of the spectrum and their business plans.

Discussion

1. The Commission Should Adopt Service Area License Sizes for AWS-3 Spectrum Which Preserve Licensing Opportunities for a Variety of Applicants.

We support adoption of rules that will provide meaningful opportunities for local, rural and regional businesses to win licenses for AWS-3 spectrum. The spectrum should not be subdivided and should be licensed on a CMA basis. We strongly oppose the adoption of Regional Economic Area Grouping ("REAG") or nationwide licensing for any of this spectrum.

As we have described in numerous comments in prior Commission rulemaking proceedings, licensing over smaller geographic areas benefits smaller businesses by lowering the entry barriers to acquiring a license. In his recent testimony before the Committee on Small Business, U.S. House of Representatives, Chairman Martin stated that

"...the cost of acquiring spectrum licenses with small geographic service areas is, on average, significantly lower than the cost of acquiring licenses with larger geographic areas. The availability of licenses divided into CMAs and EAs enables smaller wireless providers to fulfill business plans focused on serving smaller, discrete areas of the country, including remote and rural areas. The availability of smaller licenses at auction also allows smaller providers to avoid transaction costs associated with obtaining portions of larger spectrum licenses in the secondary market through partitioning, disaggregation, or leasing."³

We agree with this analysis of the benefits of an approach to geographic service selection for the AWS-3 spectrum as an appropriate means to give smaller, rural and regional providers a fair chance to participate in the provision of advanced services in rural as well as non-rural markets.⁴

³ See Written Testimony of Chairman Kevin J. Martin before the Committee on Small Business, U.S. House of Representatives dated October 10, 2007.

⁴ See also the Commission's Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses (FCC 07-181) released December 6, 2007, Paras. 64-66.

2. **The Commission Should Not Adopt Regional Economic Area Grouping or Nationwide Licensing for any AWS-3 Spectrum.**

The Commission requests comment regarding the possible use of a regional or nationwide approach to licensing AWS-3 spectrum. We strongly oppose use of REAG or nationwide licenses for this new spectrum. Regional or nationwide licensing is not necessary for large national firms who intend to use this new spectrum to supplement their capacity to offer AWS services in certain regions or to offer localized versions of such services. Larger carriers seeking regional or nationwide coverage can meet these needs by bidding individually for CMA licenses when this spectrum is auctioned. In fact, for larger firms seeking to geographically expand or spectrally augment existing operations, smaller license areas allow for efficient deployment of spectrum, as contrasted to force-fitting REAG boundaries onto individual footprints.

The Commission's adoption of CMA service area sizes will not preclude larger firms from acquiring the licenses or combinations of licenses to implement their business plans. On the other hand if the Commission chooses to license this new spectrum with REAG or national service areas, local, rural and regional providers will be unable to participate and the Commission will have essentially prejudged the issue of whether or not their participation would have been efficient and in the public interest.

3. **The Commission Should Use Standard Simultaneous Multi-Round Bidding Procedures Without Package Bidding for AWS-3 Licensee Selection.**

We oppose the proposed use of novel and complex auction techniques as a way of offering potential licensees the chance to select band plans, geographic service area sizes and performance requirements which are best suited to their individual business plans.⁵ We support use of standard simultaneous multi-round bidding procedures without package bidding for AWS-3 licensee selection.

⁵ NPRM, ¶¶ 39-47

We oppose the proposals in the Commission's Notice because they would impose a disproportionate burden on smaller and regional bidders to deal with the changes and complexity of the resulting bidding system. It appears that the Commission would likely employ a bidding procedure based on the platform developed for Auction 73 including anonymous bidding and the new complex and novel auction format ("SMR-HPB") that permits license-by-license bidding including package bidding using hierarchical package bidding ("HPB"). In the circumstances of Auction 73 where there are numerous EA and CMA licenses which are not subject to package bidding, the Commission is attempting to avoid this complexity for local, rural and regional bidders. Rather than attempt to split the limited amount of AWS-3 spectrum into package and non-package parts, we suggest that the Commission forego the use of package bidding altogether for this auction.

We believe that use of standard SMR procedures is the proper way for the Commission to assure that its bidding procedures are fair, objective, open, and transparent, that all bidders have the flexibility and tools they need to manage their risk and that the Commission's procedures are not inadvertently skewed to benefit sophisticated large bidders with deep pockets.

4. The Commission Should Maintain Reasonable Renewal And Performance Requirements.

It is likely that AWS-3 licenses will be allocated by some form of auction. Applicants will thus spend many millions of dollars to win the right to construct wireless networks using the available 2155-2175 MHz spectrum. Such expenditures create the strongest possible incentive to design and build commercially viable networks. However, as the FCC recognizes,⁶ and as is discussed in the Introduction above, there are "potentially serious interference issues" which arise from the nature of the spectrum available. Indeed over half the NPRM (Paragraphs 11-82) is devoted to exploring various approaches to spectrum utilization issues ("uplink-downlink"

⁶ NPRM, ¶2.

"structured uplink-downlink," "downlink" etc.), which "will enable service providers to maximize use of the spectrum to provide advanced wireless services, while providing the necessary protections against interference."⁷

Given that uncertainty about the nature of the networks to be developed in this spectrum band, the FCC should, in our view, allow carriers maximum flexibility in the criteria for license renewal and licensee performance standards it eventually adopts. Accordingly, we believe that the FCC should adopt the standards now applicable to AWS-1 spectrum.

As codified in Sections 27.13(g) and 27.14(a) of the Commission's Rules, AWS-1 licensees have ten year license terms and are required to provide "substantial service" pursuant to Section 27.14(a) within fifteen years of the issuance of their licenses.⁸ This standard also applies in renewal context pursuant to Section 27.14(a) of the Rules. We would submit that in light of the network design and interference problems discussed at length in the earlier parts of the NPRM, the FCC should reaffirm and adopt those standards, as being most likely to be adaptable to the types of systems AWS-3 licenses will be permitted to construct.

However, the FCC appears to wish to move in the opposite direction. The Commission proposes to separate license performance requirements from the "substantial service" standard applicable to license renewals, as has also been done in the 700 MHz service.⁹ What this would mean, at least in theory, is that a licensee could meet every FCC performance requirement, however onerous, obey all relevant laws and FCC rules, and still not have its license renewed because of an ex post facto judgment by the FCC that it had failed to provide "substantial service." We submit that this rule change was not a good idea in the 700 MHz proceeding and would be a worse idea in the AWS-3 renewal context, owing precisely to the spectrum constraints referred to above.

⁷ NPRM, ¶11.

⁸ NPRM, ¶107. Authorizations issued on or before December 31, 2009 will have fifteen year terms.

⁹ NPRM, ¶108.

As a corollary to the new standard for renewals, the FCC also proposes that the renewal process be made even more uncertain by renewal applicants having to make showings about service "levels," service interruptions, rural service, inquiries received by the licensees about spectrum leasing and their responses thereto and "other factors typically associated with assessments of a licensee's level of service to the public."¹⁰

This vague language will create uncertainty regarding AWS-3 renewal standards, which is contrary to the public interest. Moreover, the large financial investments necessary to building wireless systems have been and will be made only so long as there is a reasonable license renewal expectancy, based on ascertainable and clear standards. These standards, if adopted, would not provide the necessary clarity. Nor would the FCC's proposal to eliminate the comparative renewal process be in the public interest, despite its superficial attractiveness, as that proposal would allow the FCC to deny AWS-3 license renewal applications on its own motion based on the Commission's application of the vague criteria referred to above.¹¹

Under the present system used in Part 22, Part 24 and Part 27 (with exception of the 700 MHz service), a comparative renewal proceeding only occurs if competing applications are filed. Generally, such applications are not filed, as there is no reason to expect that wireless licensees which have complied with the Commission's rules and with the applicable performance requirements will not have their licenses renewed. Oddly, the FCC now appears to believe that this is a bad thing, despite the flourishing national wireless network the FCC's wise policies have brought into being.

The Commission's proposal would undermine the legitimate licensee expectation of license renewal, which underpins carrier capital expenditures, by allowing the FCC to deny AWS-3

¹⁰ NPRM, ¶109.

¹¹ NPRM, ¶109.

license renewal applications based on its varying assessment of carrier performance. To adopt such rules would be a profound mistake.

Integrally linked to reasonable renewal standards are flexible performance requirements. As noted above, Section 27.14(a) now contains a flexible "substantial service" performance requirements.

This standard reflects an evolution in the Commission's regulation of wireless performance requirements in the eighties, nineties, and this decade from lesser to greater flexibility, based on experience. The Commission's original wireless performance standards, established in the eighties and early nineties for its Part 22 cellular licensees, provided for a five year "build out" period, which established a licensee's Cellular Geographic Service Area ("CGSA"), during which time licensees could expand their service areas free of competing applications. After that five year period, the areas not covered by the CGSA (which is itself defined by the 32 dBu contour of the carrier's signal coverage), were considered "unserved areas," open to applications by all, including the incumbent licensees.¹² In the mid-1990's, based on the cellular experience, the Commission modified these performance standards for PCS licensees, substituting requirements of one third population coverage for Major Trading Areas ("MTAs") after five years and two-thirds coverage after ten years. Basic Trading Area ("BTA") PCS licensees have been permitted to build out their networks at their own pace, after meeting an initial 25% population coverage requirement within the first five years of their license terms.¹³

Further, like Part 27 licensees, Part 24 PCS licensees have been offered the additional option of providing "substantial service" within their licensed areas at five and ten year intervals.¹⁴ Finally, the Commission's rules now provide for flexibility for wireless licensees to subdivide their

¹² See Section 22.947-949 of the Commission's Rules.

¹³ See Sections 24.203(a) and (b) of the Commission's Rules.

¹⁴ Ibid.

service areas and provide opportunities for use of underutilized spectrum through the partitioning, disaggregation and spectrum leasing processes.¹⁵

As with the renewal standard, the FCC's recent 700 MHz order broke with that evolution, adopting draconian geographic-based performance requirements.¹⁶ But again, whatever the merits of that decision in the context of 700 MHz spectrum, with its excellent propagation characteristics and relative lack of interference constraints, strict performance requirements should not be applied to AWS-3 spectrum, in which licensees will have to operate under far more uncertain conditions.

Commenters are asked to consider new rural "safe harbors,"¹⁷ geographic or population "benchmarks,"¹⁸ and/or geographic or population "construction requirements."¹⁹ The FCC offers the two varieties of "keep what you use" licensing,²⁰ both of which threaten licensees with loss of territory, which may result from interference constraints entirely outside their control, and considers how best to "terminate" licenses if carriers "fail to meet" the performance requirements. Going beyond even the 700 MHz rules, the FCC now proposes combining spectrum auctions with performance promises,²¹ by multiplying dollars bid by a dollar value assigned to coverage commitments.²² This would undermine the integrity of auctions as a selection method and breed endless litigation over whether carriers had kept their promises, or whether they are entitled to delays or waivers, etc. The FCC also revives an idea not adopted in the 700 MHz proceeding, proposing to require licensees to engage in "good faith negotiations" regarding with potential spectrum lessees, and tying that new responsibility to the renewal process as well, along with "issues related to spectrum access, service to rural areas, or both."²³

¹⁵ See, e.g., Section 1.9001-9080; 22.948; and 24.714 of the Commission's Rules.

¹⁶ 700 MHz Second Report and Order, FCC 07-132, paras 153-177.

¹⁷ NPRM, ¶114.

¹⁸ NPRM, ¶116.

¹⁹ NPRM, ¶¶117-118.

²⁰ NPRM, ¶¶122-123.

²¹ NPRM, ¶125.

²² NPRM, ¶126.

²³ NPRM, ¶132.

Taken together, it is difficult to imagine proposals more contrary to twenty years of sensible previous FCC wireless regulation or more likely to undermine participation in auctions and deter investment in wireless systems. The FCC should adopt the AWS-1 performance rules for the AWS-3 band.

5. The FCC Should Not Adopt The Proposals of M2Z or Others Proposing Detailed Requirements.

The FCC seeks comment on the proposals of M2Z Network and other parties who seek to apply various conditions, drawn from their own business plans, to govern the operation of networks using the AWS-3 band. The FCC should reject these proposals.

As a general matter, the FCC should not adopt service rules which replicate one carrier's business plan, in part because it will encourage an endless proliferation of self interested spectrum proposals in the future. It also undermines existing rules and legitimate expectations, as well as the principle that spectrum should be put to its highest and best use, as reflected in auction bids and subsequent network development by the high bidder.

Also, there is simply no way to know now whether the proposed requirements suggested by M2Z, or any of the other applicants, would work. It is not clear, for example, whether M2Z's idea of requiring free wireless broadband service to end users, "at engineered data rates" is economically viable. We believe that once the auction is over, and the required payments have been made, the issue of business models should be left to the market, rather than placing government's hand on the scale prior to the auction.

"Free" service sounds wonderful. But, to paraphrase Milton Friedman, "There is no such thing as free service." It will have to be paid for by revenues from somewhere, presumably other customers not receiving "free" service. M2Z's business model may, of course, flourish. But it should have to bid in the auction along with everyone else, win the auction, and then submit its plan to the test of the marketplace.

Conclusion

Among the most important issues before the Commission in this proceeding is how to create licensing opportunities on the new AWS-3 spectrum which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. We propose the adoption of CMA service areas as the most flexible approach to meeting the needs of existing carriers and prospective new entrants. Unlike REAG and nationwide service area sizes which are only affordable and suitable for the largest firms, adoption of smaller service areas will establish opportunities to acquire spectrum at auction by bidders of all sizes. We also support use

[Remainder of page left blank intentionally]

of standard SMR bidding procedures without package bidding, and without proposed band plan, geographic service area size and performance requirement selection to assure that smaller and regional bidders do not bear a disproportionate burden with respect to the risks and complexity of the resulting bidding system. We also support reasonable and flexible license renewal and licensee performance standards, and ask the FCC to reject the self-interested proposals of M2Z and other applicants.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

By Sara Cole 

Sara Cole

Manager, Federal Affairs

TDS Telecommunications Corporation

525 Junction Road

Madison, WI 53717

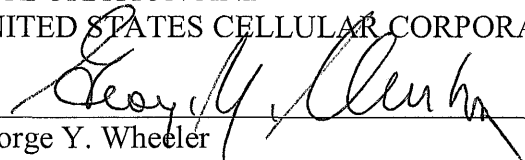
Phone: 608-664-4000

Fax: 608-845-4809

Email: sara.cole@tdstelecom.com

TDS TELECOMMUNICATIONS
CORPORATION AND

UNITED STATES CELLULAR CORPORATION

By George Y. Wheeler 

George Y. Wheeler

Peter Connolly

Holland & Knight LLP

2099 Pennsylvania Avenue, N.W. #100

Washington, DC 20006-6801

Phone: (202) 955-3000


Fax: (202) 955-5564

Email: george.wheeler@hklaw.com

peter.connolly@hklaw.com

Its Attorneys

UNITED STATES CELLULAR CORPORATION

By Grant Spellmeyer 

Grant Spellmeyer

Director-Regulatory Affairs

United States Cellular Corporation

8410 West Bryn Mawr

Phone: 723-399-4280

Fax: 723-399-3133

Email: grant.spellmeyer@uscellular.com

December 14, 2007

5000087_v1